

FILED/ACCEPTED

DEC 15 2011

Federal Communications Commission  
Office of the Secretary

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	EB Docket No. 07-147
	)	
<b>PENDLETON C. WAUGH, CHARLES M.</b>	)	File No. EB-06-IH-2112
<b>AUSTIN, and JAY R. BISHOP</b>	)	NAL/Acct. No. 200732080025
	)	
<b>PREFERRED COMMUNICATION</b>	)	FRN No. 0003769049
<b>SYSTEMS, INC.</b>	)	
	)	
Licensee of Various Site-by-Site Licenses in	)	
the Specialized Mobile Radio Service.	)	
	)	
<b>PREFERRED ACQUISITIONS, INC.</b>	)	FRN No. 0003786183
	)	
Licensee of Various Economic Area Licenses	)	
in the 800 MHz Specialized Mobile Radio	)	
Service	)	

To: The Commission<sup>1</sup>

**ENFORCEMENT BUREAU'S**  
**RESPONSE REGARDING STATUS OF PENDLETON C. WAUGH'S APPEALS**

1. The Enforcement Bureau (Bureau) hereby opposes the December 1, 2011 pleading filed by the Whitney H. Waugh, Sr., in his capacity as Personal Representative of Pendleton C. Waugh's Estate (Waugh Estate) entitled "Impact of the Death of Pendleton C. Waugh on This Proceeding" (Waugh Statement). The pleading concerns the impact of the recent death of Mr. Waugh, a party in the above-captioned hearing matter, on this proceeding and on Mr. Waugh's appeals pending before the Commission.

<sup>1</sup> As the certificate of service indicates, the Bureau is serving a copy of this pleading on the Office of General Counsel, which sent the initial request for the information concerning the status of Mr. Waugh's appeals. The Bureau, out of an abundance of caution, addresses this filing to the Commission so that it may consider this Response in connection with other pleadings filed in this proceeding.

No. of Copies rec'd 044  
List ABCDE

2. By way of background, the Bureau and several of the above-captioned parties executed a settlement agreement (Settlement Agreement) in this hearing. Mr. Waugh opposed that Settlement Agreement, and after its approval,<sup>2</sup> he appealed to the Commission.<sup>3</sup> During the pendency of those appeals, Mr. Waugh passed away. On September 1, 2011, Mr. Waugh's attorney informed the Commission's Office of General Counsel (OGC) of Mr. Waugh's death and requested an abeyance of the proceedings.<sup>4</sup> In response to that request, OGC agreed to hold the proceedings in abeyance for a limited period of time, but requested that the Waugh Estate provide information about the impact of Mr. Waugh's death on this proceeding and on the pending appeals (OGC Letter).<sup>5</sup> The OGC Letter permitted the Bureau the opportunity to respond to any information the Waugh Estate provided. The Waugh Estate filed the Waugh Statement on December 1, 2011.

3. Although the Waugh Statement attempts to distract the Commission by focusing on allegations of Bureau misconduct and challenges to the legality of the Settlement Agreement – issues that were already fully briefed for the record<sup>6</sup> – the real

---

<sup>2</sup> See *Pendleton C. Waugh, et al.*, Order, FCC 09M-51 (ALJ Sippel, rel. Aug. 6, 2009); *Pendleton C. Waugh, et al.*, Memorandum Opinion & Order, FCC 09M-57 (ALJ Sippel, rel. Sept. 25, 2009). Both orders contain copies of the settlement subject to the appeals.

<sup>3</sup> See Appeal from Presiding Officer's Final Ruling, filed Sept. 8, 2009; Appeal from Presiding Officer's Final Ruling, filed Oct. 26, 2009.

<sup>4</sup> See Letter from William D. Silva to Joel Kaufman, dated September 1, 2011. The Bureau filed a response to the request for an abeyance with the Commission. See Enforcement Bureau's Response to Request to Hold Hearings in Abeyance on September 19, 2011.

<sup>5</sup> See Letter from Joel Kaufman, Associate General Counsel and Chief, Administrative Law Division, Federal Communications Commission, to William Silva, Counsel for Whitney H. Waugh, Sr. (Nov. 10, 2011) (OGC Letter). The Bureau has attached this letter as Exhibit A to this pleading.

<sup>6</sup> See Waugh Statement at 4-10 (internal citations omitted). Specifically, the Waugh Statement challenges the Bureau's past conduct during this proceeding, asserts that the Settlement Agreement is unlawful, and alleges that the Bureau violated the Commission's *ex parte* rules. See *id.* These issues have been thoroughly discussed in the parties' previous pleadings. See, e.g., Enforcement Bureau's Consolidated Opposition to Pendleton's C. Waugh's Appeals, filed Nov. 10, 2009; Enforcement Bureau's Statement of Clarification, filed Oct. 27, 2010. The Bureau submits it would waste Commission resources to revisit these issues here.

issue before the Commission is whether Mr. Waugh's appeals of the Settlement Agreement should continue after his death. The Bureau respectfully submits that Mr. Waugh's passing moots his appeals and they should not proceed.

4. These appeals raise two issues – whether Mr. Waugh met the character qualifications to hold a Commission license and whether Mr. Waugh should be allowed to preserve his right to work for, consult for, or hold ownership interests in the above-captioned licensees. With regard to the first issue, the Waugh Estate agrees that “[t]he question of the qualifications of Mr. Waugh to become a Commission licensee has been rendered moot by his death.”<sup>7</sup> With regard to the second issue, however, the Waugh Statement argues that the appeal is not moot because the Waugh Estate essentially stepped into Mr. Waugh's shoes, and that, like Mr. Waugh, the Waugh Estate's rights to work for, consult for, or hold ownership interests in the above-captioned licensees are limited by the Settlement Agreement.<sup>8</sup> This, however, is a misreading of the Settlement Agreement.

5. By its express terms, the Settlement Agreement is personal to Mr. Waugh and prohibits only Mr. Waugh from obtaining an ownership interest or future employment interest in the above-captioned licensees. It does not prohibit the Waugh Estate from obtaining an ownership interest or future employment interest in the above-captioned licensees. Because the Waugh Estate is not affected by the Settlement Agreement, the Bureau submits that the appeal on this issue is moot.

6. The appeals should not continue solely to perpetuate claims outside the scope of this proceeding. Throughout this litigation, Mr. Waugh continually argued that

---

<sup>7</sup> Waugh Statement at 10.

<sup>8</sup> See *id.* at 11-12.

he was entitled to compensation for almost 10 years of working for the above-captioned licensees, and that the above-captioned licensees failed to deliver on compensation owed to him. To the extent the Waugh Estate seeks to preserve the appeals solely to continue arguing Mr. Waugh's claim for compensation for past services rendered,<sup>9</sup> whether in the form of monetary compensation or ownership interests in the above-captioned licensees, this proceeding is not the proper forum for such claims. Rather, the Waugh Estate may litigate such claims in state court. Indeed, to the best of the Bureau's information and belief, the Waugh Estate is doing exactly that by continuing to litigate state court claims that Mr. Waugh initiated.<sup>10</sup> Accordingly, the Bureau submits that Mr. Waugh's appeal as to his rights to work for, consult for, or hold ownership interests in the above-captioned licensees should not survive his death.

7. The Waugh Statement also argues that Mr. Waugh's appeals should continue because of the public interest in addressing the Bureau's alleged violation of the *ex parte* rules and of the legality of the Settlement Agreement. Specifically, the Waugh Statement suggests that "public interest is a factor" in determining whether an issue on appeal should be considered moot<sup>11</sup> and relies on *Alton & S. Ry. Co. v. Int'l Ass'n of Machinists & Aerospace Workers*, 463 F.2d 872 (D.C. Cir. 1972) in support of this argument.<sup>12</sup>

8. However, *Alton* is inapposite – and in fact supports the Bureau's position that Mr. Waugh's appeals should not survive his death. In *Alton*, the court not only found the subject appeal to be moot but concluded that public interest supports keeping an

---

<sup>9</sup> See *id.*

<sup>10</sup> See *Raymond A. Hebrank, Trustee of The Raymond A. Hebrank Trust and Pendleton C. Waugh v. Preferred Communications Systems Inc.*, C.A. No. 5434-CC, Court of Chancery of the State of Delaware.

<sup>11</sup> Waugh Statement at 13.

appeal alive *only* when there is a “prediction” of a continuation or recurrence of “the same legal dispute.”<sup>13</sup> As discussed above, in the instant case, the issues on appeal are personal to Mr. Waugh and thus his passing eliminates any possibility of a continuation or recurrence of “the[se] same legal dispute[s].” In the absence of any such possibility, public interest is not a factor in determining whether an appeal is moot.<sup>14</sup>

9. Furthermore, the Bureau respectfully submits that here, public interest is actually better served by upholding the Settlement Agreement which conserves substantial resources and proffers a \$100,000 voluntary contribution and a compliance plan aimed at deterring any potential violations of the nature designated for hearing in this case.<sup>15</sup> Even were the appeals to remain viable, the Bureau would continue to support upholding the Settlement Agreement. Therefore, while the Bureau respectfully requests the Commission to consider the appeals moot, in either event, it requests that the Commission uphold the Settlement Agreement.

Respectfully submitted,  
P. Michele Ellison  
Chief, Enforcement Bureau

---

<sup>12</sup> See Waugh Statement at 13.

<sup>13</sup> *Alton*, 463 F.2d at 879 (emphasis added).

<sup>14</sup> See *Alton*, 463 F.2d at 878. Moreover, *Alton* also concludes that “[w]hen events during the pendency of the appeal have eliminated any possibility that the court’s order may grant meaningful relief affecting the controversy that precipitated the litigation, applicable doctrine permits, and judicial administration generally calls for, dismissal of the appeal.” 463 F.2d at 878. See also, *Amalgamated Association of Street etc. Employees Div. 998 v. Wisconsin Emp. Rel. Bd.*, 340 U.S. 416, 418, (1951) (“[t]he court will not decide a moot case on the sole ground of public importance”). Here again, Mr. Waugh’s passing eliminates the possibility that any order “can grant meaningful relief affecting the controversy that precipitated the litigation.” For these reasons, “judicial administration” calls for dismissal of Mr. Waugh’s appeals.

<sup>15</sup> See, e.g., Joint Request for Approval of Settlement and Termination of Proceedings, filed Aug. 5, 2009.

*asinh*

Anjali K. Singh  
Assistant Chief  
Investigations and Hearings Division

A handwritten signature in dark ink, appearing to read "Gary A. Oshinsky". The signature is fluid and cursive, with a large loop at the end.

Gary A. Oshinsky  
Attorney  
Investigations and Hearings Division

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420

December 15, 2011

## EXHIBIT A





Federal Communications Commission  
Washington, D.C. 20554

November 10, 2011

William D. Silva, Esquire  
Law Offices of William D. Silva  
P.O. Box 1121  
Stevensville, MD 21666

Re: EB Docket No. 07-147

Dear Mr. Silva:

On September 9, 2011, you advised us that Pendleton Waugh, who filed a pending appeal in this proceeding, had died.<sup>1</sup> You indicated that you would address the impact of his death on this matter at a later date and requested that the proceeding be held in abeyance. The Enforcement Bureau (EB) responded that the proceeding should only be held in abeyance for a limited period of 60 to 90 days and proposed that you should file a status report within 30 days.<sup>2</sup> You in turn replied that, because the probate of Mr. Waugh's estate might take at least 150 days, a more realistic timetable for holding the proceeding in abeyance would be 180 days.<sup>3</sup>

Pursuant to 47 C.F.R. § 0.251(c) and given that EB does not object to an abeyance period of 90 days, we will hold the proceeding in abeyance for 90 days from the date that you informed us of Mr. Waugh's death. It is not apparent to us why you cannot address the impact of Mr. Waugh's death on the proceeding until probate has been completed. Accordingly, we request that you submit a pleading addressing the impact of Mr. Waugh's death on the proceeding by December 1, 2011. If you believe that you cannot

---

<sup>1</sup> See Letter from William D. Silva to Joel Kaufman, Esquire, Associate General Counsel (Sept. 2, 2011).

<sup>2</sup> See Enforcement Bureau's Response to Request to Hold Proceedings in Abeyance, filed September 19, 2011.

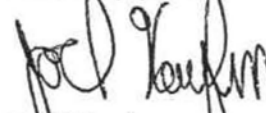
<sup>3</sup> See Letter from William D. Silva to Joel Kaufman, Esquire, Associate General Counsel (Sept. 28, 2011).



William D. Silva, Esquire  
Page 2

address this issue until after the completion of probate, please explain why this is so. Also, please indicate whom you are representing at this time. EB may file a response by December 15, 2011.

Sincerely yours,



Joel Kaufman  
Associate General Counsel and  
Chief, Administrative Law Division  
Office of General Counsel

cc:

Hon. Richard L. Sippel  
Chief, Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Room 1-C768  
Washington, D.C. 20554

Gary A. Oshinsky, Esquire  
Anjali K. Singh  
Investigations and Hearing Division  
Federal Communications Commission  
445 12th Street, S.W.  
Room 4-C330  
Washington, D.C. 20554

Charles M. Austin  
Preferred Acquisitions, Inc.  
Preferred Communications Systems, Inc.  
400 E. Royal Lane  
9 Suite N-24  
Irving, TX 75039

James McWhinnie  
Damon Key Leong Kupchak Hastert  
1003 Bishop Street  
Suite 1600  
Honolulu, HI 96813

William D. Silva, Esquire  
Page 3

Jay R. Bishop  
P.O. Box 5598  
Palm Springs, CA 92262

Michael D. Judy  
5874 East Nees  
Clovis, CA 93611

David L. Hill  
Hall Estill, Hardwick, Gable, Golden & Nelson, P.C.  
1120 20th Street, N.W.  
Suite 700, North Building  
Washington, D.C. 20036

**CERTIFICATE OF SERVICE**

Kerri Johnson, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 15th day of December, 2011, sent by first class United States mail or electronic mail, as noted, copies of the foregoing "Enforcement Bureau's Opposition Regarding Status of Pendleton C. Waugh's Appeals" to:

Charles M. Austin  
Preferred Acquisitions, Inc.  
Preferred Communication Systems, Inc.  
400 East Royal Lane, 9 Suite N-24  
Irving, TX 75039  
precomsys@aol.com

Jay R. Bishop  
P.O. Box 5598  
Palm Springs, CA 92262  
jaybishopps@aol.com  
michellebishopps@aol.com

Joel Kaufman\*  
Associate General Counsel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A666  
Washington, D.C. 20054

Michael D. Judy  
5874 East Nees  
Clovis, California 93611

Chief Administrative Law Judge Richard L. Sippel\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C768  
Washington, D.C. 20054

William D. Silva\*\*  
Law Offices of William D. Silva  
P.O. Box 1121  
Stevensville, MD 21666  
bill@luselaw.com  
Attorney for Whitney H. Waugh, Personal Representative of Estate of Pendleton C. Waugh

James McWhinnie  
Damon Key Leong Kupchak Hastert  
1003 Bishop Street, Suite 1600  
Honolulu, Hawaii 96813  
Attorney for Toshiaki Saito

David L. Hill  
Hall Estill, Hardwick, Gable,  
Golden, & Nelson, P.C.  
1120 20<sup>th</sup> Street  
Suite 700, North Building  
Washington, DC 20036

  
Kerri Johnson

\*Hand-Delivered and Courtesy Copies Sent Via E-Mail and Facsimile

\*\*Service Copies May Be Sent Via E-Mail (E-Mail service acceptable in lieu of hard copies for files 4 MB or less per agreement.)